IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6147 OF 2003

Sou. Vatsala Trimbakrao Naikwadi)
Adult, Occ : Service as a Head Mistress)
In Zilla Parishad Primary School,)
Indapur, Tal. Barsi, Dist. Solapur)...Petitioner

V/s.

1. The Chief Executive Officer,)
   Zilla Parishad, Solapur.)

2. The Education Officer (Primary),)
   Zilla Parishad, Solapur.)

3. The State of Maharashtra.)...Respondents

Shri S.G. Kudle for the Petitioner.
Shri Nitin Jamdar for Respondent Nos.1 and 2.
Shri P.I. Khemani, Assistant Government Pleader, for Respondent No.3.

CORAM : H.S. BEDI, C.J., &
V.M. KANADE, J.

DATED : DECEMBER 12, 2006.

JUDGMENT (PER H.S. BEDI, C.J.) :-

1. The petitioner, while working as Head Mistress in the Zilla Parishad Primary School at Indapur, District Solapur, gave a notice for voluntary retirement on 4th July, 2002 to become operative with effect from 30th September, 2002. The case of the petitioner is that the notice was withdrawn by letter dated 14th September, 2002, Exhibit “A-1” to the Rejoinder. It appears that a copy of the notice for voluntary retirement was also given by the petitioner to respondent No.2 on 24th October, 2002. The respondents gave no reply to the aforesaid notices and the petitioner was allowed to continue in service and to work upto 11th July, 2003. In the meanwhile, she received several communications from the department, Exhibit-B dated 29th May, 2003 and Exhibits-C and D both dated 26th March, 2003 informing her that her retirement would be effective from 30th September, 2003. The petitioner is aggrieved by the letter, Exhibit-G dated 29th May, 2003 whereby her notice for voluntary retirement had been accepted and she is deemed to have been relieved from service on 30th September, 2002 pursuant to Rule 66(1) of the Maharashtra

Civil Services (Pension) Rules,1982. The present petition has been filed impugning the order Exhibit-G as it is the petitioner's case that she would be entitled to all the benefits upto 11th July, 2003 as she had actually worked upto that date.

2. A Reply has been filed by the respondents and it has been pointed out that the petitioner was not entitled to payment of salary beyond 30th September, 2002 as the notice for voluntary retirement had been accepted from that date. The fact that letter dated 14th September, 2002 and a copy of notice dated 24th October, 2002 have been received, have not been denied. Reliance has also been placed on Sub-Rule 2 of Rule 66 of the Rules to argue that where the appointing authority did not refuse to grant permission for retirement before the expiry of period mentioned in the notice, the retirement would come into effect from the date fixed in the notice.

3. Mr.Kudle, the learned Counsel for the petitioner has argued that the petitioner had withdrawn her notice of

retirement on 14th September, 2002 and as such the petitioner was entitled to have been continued in service upto 11th July, 2003 and that she was entitled to salary and other benefits upto that date.

4. The learned Counsel for the respondent has, however, pointed out that it was not clear from the record whether letter dated 14th September, 2002 had been received by the respondent and that the letter dated 24th October, 2002 if taken into account was after the notice period; and as such the petitioner was deemed to have superannuated as per Rule 66(2) of the Rules. The fact that the petitioner had been allowed to continue in service upto 11th July, 2003 is however admitted.

5. We have heard the arguments of the learned Counsel for both the parties. The fact that the petitioner was allowed to continue in service upto 11th July, 2003 is not disputed. The matter would however hinge on the fact as to whether the notice of withdrawal of voluntary retirement had been received by the respondent before the expiry of the

notice period. It will be seen that the notice of voluntary retirement had been given on 4th July, 2002 and therefore, Exhibit-A, letter dated 14th September, 2002 the notice of withdrawal could be taken into account. The respondent, have, however, highlighted that it was not clear as to whether the letter dated 14th September, 2002 had been received by them. We, however, find from the pleadings that the respondents have not taken the stand that this letter had not been received. On the contrary, the conduct of the respondent in allowing the petitioner to continue in service upto 11th July, 2003 clearly reveals that the notice of withdrawal had been served on the respondent prior to the date fixed in the notice for voluntary retirement.

6. We are, therefore, of the opinion that this petition must succeed. Exhibit-G is accordingly quashed. We direct the respondent to pay the salary of the petitioner as per Rules and to refix her pension and to make all the due payments within two months from today. We clarify that the amount due to the petitioner will be determined upto 11th July, 2003. No order as to costs.

CHIEF JUSTICE

V.M. KANADE, J.